

HOUSE BILL No. 1470

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-2-2.

Synopsis: Income apportionment for income tax purposes. Eliminates the throwback rule that is used in determining income subject to taxation by Indiana.

Effective: January 1, 2016.

Ober, Leonard

January 14, 2015, read first time and referred to Committee on Ways and Means.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1470

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3-2-2, AS AMENDED BY P.L.233-2013,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2016]: Sec. 2. (a) With regard to corporations and
4 nonresident persons, "adjusted gross income derived from sources
5 within Indiana", for the purposes of this article, shall mean and include:
6 (1) income from real or tangible personal property located in this
7 state;
8 (2) income from doing business in this state;
9 (3) income from a trade or profession conducted in this state;
10 (4) compensation for labor or services rendered within this state;
11 and
12 (5) income from stocks, bonds, notes, bank deposits, patents,
13 copyrights, secret processes and formulas, good will, trademarks,
14 trade brands, franchises, and other intangible personal property to
15 the extent that the income is apportioned to Indiana under this



section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

Income from a pass through entity shall be characterized in a manner consistent with the income's characterization for federal income tax purposes and shall be considered Indiana source income as if the person, corporation, or pass through entity that received the income had directly engaged in the income producing activity. Income that is derived from one (1) pass through entity and is considered to pass through to another pass through entity does not change these characteristics or attribution provisions. In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter), only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r) is considered derived from sources within Indiana.

(b) Except as provided in subsection (l), if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by the following:

(1) For all taxable years that begin after December 31, 2006, and before January 1, 2008, a fraction. The:

(A) numerator of the fraction is the sum of the property factor plus the payroll factor plus the product of the sales factor multiplied by three (3); and

(B) denominator of the fraction is five (5).

(2) For all taxable years that begin after December 31, 2007, and before January 1, 2009, a fraction. The:

(A) numerator of the fraction is the property factor plus the payroll factor plus the product of the sales factor multiplied by four and sixty-seven hundredths (4.67); and



- 1 (B) denominator of the fraction is six and sixty-seven
 2 hundredths (6.67).
 3 (3) For all taxable years beginning after December 31, 2008, and
 4 before January 1, 2010, a fraction. The:
 5 (A) numerator of the fraction is the property factor plus the
 6 payroll factor plus the product of the sales factor multiplied by
 7 eight (8); and
 8 (B) denominator of the fraction is ten (10).
 9 (4) For all taxable years beginning after December 31, 2009, and
 10 before January 1, 2011, a fraction. The:
 11 (A) numerator of the fraction is the property factor plus the
 12 payroll factor plus the product of the sales factor multiplied by
 13 eighteen (18); and
 14 (B) denominator of the fraction is twenty (20).
 15 (5) For all taxable years beginning after December 31, 2010, the
 16 sales factor.
 17 (c) The property factor is a fraction, the numerator of which is the
 18 average value of the taxpayer's real and tangible personal property
 19 owned or rented and used in this state during the taxable year and the
 20 denominator of which is the average value of all the taxpayer's real and
 21 tangible personal property owned or rented and used during the taxable
 22 year. However, with respect to a foreign corporation, the denominator
 23 does not include the average value of real or tangible personal property
 24 owned or rented and used in a place that is outside the United States.
 25 Property owned by the taxpayer is valued at its original cost. Property
 26 rented by the taxpayer is valued at eight (8) times the net annual rental
 27 rate. Net annual rental rate is the annual rental rate paid by the taxpayer
 28 less any annual rental rate received by the taxpayer from subrentals.
 29 The average of property shall be determined by averaging the values at
 30 the beginning and ending of the taxable year, but the department may
 31 require the averaging of monthly values during the taxable year if
 32 reasonably required to reflect properly the average value of the
 33 taxpayer's property.
 34 (d) The payroll factor is a fraction, the numerator of which is the
 35 total amount paid in this state during the taxable year by the taxpayer
 36 for compensation, and the denominator of which is the total
 37 compensation paid everywhere during the taxable year. However, with
 38 respect to a foreign corporation, the denominator does not include
 39 compensation paid in a place that is outside the United States.
 40 Compensation is paid in this state if:
 41 (1) the individual's service is performed entirely within the state;
 42 (2) the individual's service is performed both within and without



1 this state, but the service performed without this state is incidental
 2 to the individual's service within this state; or

3 (3) some of the service is performed in this state and:

4 (A) the base of operations or, if there is no base of operations,
 5 the place from which the service is directed or controlled is in
 6 this state; or

7 (B) the base of operations or the place from which the service
 8 is directed or controlled is not in any state in which some part
 9 of the service is performed, but the individual is a resident of
 10 this state.

11 (e) The sales factor is a fraction, the numerator of which is the total
 12 sales of the taxpayer in this state during the taxable year, and the
 13 denominator of which is the total sales of the taxpayer everywhere
 14 during the taxable year. Sales include receipts from intangible property
 15 and receipts from the sale or exchange of intangible property. However,
 16 with respect to a foreign corporation, the denominator does not include
 17 sales made in a place that is outside the United States. Receipts from
 18 intangible personal property are derived from sources within Indiana
 19 if the receipts from the intangible personal property are attributable to
 20 Indiana under section 2.2 of this chapter. Regardless of the f.o.b. point
 21 or other conditions of the sale, sales of tangible personal property are
 22 in this state if:

23 (1) the property is delivered or shipped to a purchaser that is
 24 within Indiana, other than the United States government; or

25 (2) the property is shipped from an office, a store, a warehouse, a
 26 factory, or other place of storage in this state and

27 ~~(A) the purchaser is the United States government. or~~

28 ~~(B) the taxpayer is not taxable in the state of the purchaser.~~

29 Gross receipts derived from commercial printing as described in
 30 IC 6-2.5-1-10 shall be treated as sales of tangible personal property for
 31 purposes of this chapter.

32 (f) Sales, other than receipts from intangible property covered by
 33 subsection (e) and sales of tangible personal property, are in this state
 34 if:

35 (1) the income-producing activity is performed in this state; or

36 (2) the income-producing activity is performed both within and
 37 without this state and a greater proportion of the
 38 income-producing activity is performed in this state than in any
 39 other state, based on costs of performance.

40 (g) Rents and royalties from real or tangible personal property,
 41 capital gains, interest, dividends, or patent or copyright royalties, to the
 42 extent that they constitute nonbusiness income, shall be allocated as



provided in subsections (h) through (k).

(h)(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocated to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(i)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(j) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(k)(1) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit



allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(l) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(2) for a taxable year beginning before January 1, 2011, the exclusion of any one (1) or more of the factors, except the sales factor;

(3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(m) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

(n) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(o) Notwithstanding subsections (l) and (m), the department may not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:



(1) a foreign corporation; or

(2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

(p) Notwithstanding subsections (l) and (m), the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection (o)(1) or (o)(2) be reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections (l) and (m).

(q) Notwithstanding subsections (o) and (p), one (1) or more taxpayers may petition the department under subsection (l) for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year. A taxpayer filing a combined income tax return must petition the department within thirty (30) days after the end of the taxpayer's taxable year to discontinue filing a combined income tax return.

(r) This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

(1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and

(2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the corporation's annual statement filed with the department of insurance.

(s) This subsection applies to receipts derived from motorsports racing.

(1) Any purse, prize money, or other amounts earned for placement or participation in a race or portion thereof, including qualification, shall be attributed to Indiana if the race is conducted in Indiana.

(2) Any amounts received from an individual or entity as a result of sponsorship or similar promotional consideration for one (1) or



more races shall be in this state in the amount received, multiplied by the following fraction:

(A) The numerator of the fraction is the number of racing events for which sponsorship or similar promotional consideration has been paid in a taxable year and that occur in Indiana.

(B) The denominator of the fraction is the total number of racing events for which sponsorship or similar promotional consideration has been paid in a taxable year.

(3) Any amounts earned as an incentive for placement or participation in one (1) or more races and that are not covered under subdivisions (1) or (2) or under IC 6-3-2-3.2 shall be attributed to Indiana in the proportion of the races that occurred in Indiana.

This subsection, as enacted in 2013, is intended to be a clarification of the law and not a substantive change in the law.

SECTION 2. [EFFECTIVE JANUARY 1, 2016] **(a) IC 6-3-2-2, as amended by this act, applies to taxable years beginning after December 31, 2015.**

(b) This SECTION expires January 1, 2019.

